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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,401	03/22/2001	Mark D. Einziger	1932/OH835	3826
7590		06/22/2007		
Stephen B Shear Church & Dwight Co Inc 469 North Harrison Street Princeton, NJ 08543-5297			EXAMINER OH, SIMON J	
			ART UNIT 1618	PAPER NUMBER
			MAIL DATE 06/22/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

09/814,401

Applicant(s)

EINZIGER ET AL.

Examiner

Simon J. Oh

Art Unit

1618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3-16 and 23-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-16 and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Papers Received***

Receipt is acknowledged of the applicant's response and request for continued examination, received on 02 April 2007

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02 April 2007 has been entered.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The rejection of Claims 3-16 and 23-25 under 35 U.S.C. 103(a) as being unpatentable over Winston *et al.* (U.S. Patent No. 4,623,536) is maintained.

### ***Claim Rejections - 35 USC § 112***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 1618

The rejection of Claims 3-16 and 23-25 under 35 U.S.C. 112, second paragraph, as being indefinite is maintained.

***Response to Arguments***

Applicant's arguments with respect to the instant claims have been considered but are not considered to be persuasive.

The applicant has gone to great lengths to breathe life into the recited claim terms “slurry” and “flowable”. However, it is the position of the examiner that without more recited in the instant claims that physically distinguishes the instantly claimed invention over the prior art, the rejection over obviousness must be maintained. Claim 3 essentially recites a composition, defined openly through the use of the term “comprising”, that contains from about 50% to about 80% by weight of substantially spherical metal bicarbonate particles having a median particle size ranging from about 0.2 to about 50.0 microns, dispersed in an unspecified liquid medium. The prior art has disclosed a composition with an amount of sodium bicarbonate in an amount that falls within the recited range, with a particle size that overlaps with the recited range of particle sizes, and further comprising water as a liquid medium. As such, the examiner takes the position that the prior art reads on the instant claims.

The applicant's arguments regarding the use of the instantly claimed composition as a dialyzate is only specifically required in Claim 15, with no other additional specifically recited components that necessarily lead to the specific application of the recited product as a dialyzate. Thus, that particular argument is not commensurate with the scope of the instant claims as a whole.

Art Unit: 1618

The applicant has argued that words in a claim are given their ordinary and customary meaning, with which the examiner does not disagree. However, claims are also given their broadest reasonable interpretation. In view of what the prior art discloses, the claims are not patentably distinguishable over the prior art given the substantial similarity in the contents of the respective compositions.

The applicant contends that the terms “flowable” and “slurry” are not indefinite as evidenced by their usage in the prior art. However, the applicant’s citations of these terms in the prior art are not persuasive for the reasons explained below.

With respect to the applicant’s comparison to the Vanzo patent, the examiner points out here the examples are disclosed therein are specifically defined with respect to exact content and the method of preparation. The instant claims do not approach that level of precision with which it is defined, in terms of content.

With respect to the applicant’s comparison to the Itob patent, the examiner notes that the granule mentioned by the applicant was dissolved into water, which makes it a solution rather than a slurry, which requires solid components with a liquid medium. Furthermore, the “excellent flowability” recited in that patent is made in reference to the dry powder product, not the solution of which it is a constituent.

The Masters and Waggener patents are refuted on the same grounds as the Vanzo patent, with regard to the manner in which the respective disclosures defined the slurries recited therein with a high degree of specificity.

With regard to the Assignee’s recently allowed application, the cited Claim 8 does not resolve the present issue at hand. It is a recitation of intended use, which does not make the

Art Unit: 1618

application as a whole “more patentable”, since the patentability of the independent claim from which it ultimately depends is of greater pertinence.

As stated previously by the examiner, further limitations that define the instantly claimed compositions in terms of a more precise recitation of components or in terms of limitations that clearly recite a patentably distinct structural difference should be introduced, which would necessarily result in any newly recited functional features, in order to truly patentably distinguish over the prior art. As an example, though the instant claims recite the content of a liquid medium, this component is not further specified. The applicant also has the option of supplying comparative data to show that the instantly claimed invention is necessarily different from that of the prior art. Without more to distinguish the instant claims from the prior art, the rejections of record are maintained.

### *Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Simon J. Oh whose telephone number is (571) 272-0599. The examiner can normally be reached on M-F 8:30 am to 5:00 pm.

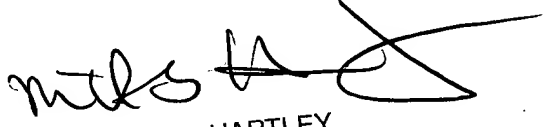
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1618

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Simon J. Oh  
Examiner  
Art Unit 1618

sj0



MICHAEL G. HARTLEY  
SUPERVISORY PATENT EXAMINER